

**In The Court of Appeals of Maryland**

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WATERKEEPER ALLIANCE, INC. ET AL., Petitioners,

v.

MARYLAND DEPARTMENT OF AGRICULTURE ET AL., Respondents.

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No. 87 September Term 2013

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On Writ of Certiorari to the Court of Special Appeals

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**BRIEF OF PETITIONERS  
WATERKEEPER ALLIANCE, INC., ET AL.**

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Leah Kelly  
Tarah Heinzen  
Environmental Integrity Project  
1000 Vermont Avenue NW, Suite 1100  
Washington, DC 20005  
(202) 263-4448 (office)  
(202) 296-8822 (fax)  
lkelly@environmentalintegrity.org

*Counsel for Petitioners*

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## **STATEMENT OF THE CASE**

This case presents an appeal of the Court of Special Appeals' May 2, 2013 reported decision affirming the Circuit Court for Anne Arundel County's interpretation of Md. Code Ann., Agric. § 8-801.1(b)(2) (West 2013). The parties first engaged in litigation in 2008, following Respondent Maryland Department of Agriculture's ("MDA") denials of Petitioner Waterkeeper Alliance, Inc.'s Maryland Public Information Act ("MPIA") requests for nutrient management records. E.140–41; 146–47. MDA based its denials on Md. Code Ann., State Gov't § 10-615(2) (West 2013), which exempts records from disclosure when contrary to a State statute, claiming that Agric. § 8-801.1(b)(2) prevented MDA from disclosing the requested documents. E.142–43; 148–49. Agric. § 8-801.1(b) provides that:

- (1) A summary of each nutrient management plan shall be filed and updated with the Department [of Agriculture] at a time and in a form that the Department requires by regulation.
- (2) The Department shall maintain a copy of each summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.

On February 10, 2009, the Circuit Court for Anne Arundel County issued its initial order interpreting Agric. § 8-801.1(b)(2). Pursuant to the 2009 Order, MDA must redact information from nutrient management plan summaries maintained for three years or less, as well as additional documents to the extent that the failure to redact such information would allow for the identification of an individual for whom a nutrient management plan was prepared with respect to those summaries maintained for three years or less. E.177–78.

On July 14, 2011, upon Respondent Farm Bureau, Inc.'s Motion for Clarification, the Circuit Court for Anne Arundel County issued another order clarifying its interpretation of Agric. § 8-801.1(b)(2). Pursuant to the 2011 Order, MDA "must redact

any information from any documents subject to disclosure under the [MPIA] that are related to Nutrient Management Plans if such information would allow for the identification of the individual for whom the Nutrient Management Plan was prepared with respect to those Nutrient Management Plan Summaries that have been maintained by [MDA] for three years or less.” E.373. In applying that standard to a spreadsheet of compliance and enforcement information generated by MDA, the 2011 Order specifically instructed MDA to redact several data fields, including visit type, operation type, and total farmed acres. E.374. It also required that MDA review comment fields and redact “any plan information that could be used to create a linkage between a specific individual and a specific nutrient management plan.” *Id.*

On May 2, 2013, in a reported decision, the Court of Special Appeals affirmed the Circuit Court for Anne Arundel County’s interpretation of Agric. § 8-801.1(b)(2). *Waterkeeper Alliance, Inc. v. Md. Dep’t of Agric.*, 211 Md. App. 417, 65 A.3d 708 (Md. Ct. Spec. App. 2013). Petitioners filed a timely Petition for Certiorari on June 18, 2013, which this Court granted on September 20, 2013.<sup>1</sup>

### **QUESTIONS PRESENTED**

1. Did the Court of Special Appeals err in broadly interpreting an exemption to disclosure under the Maryland Public Information Act, where such exemptions must be construed narrowly and in favor of disclosure?
2. Did the Court of Special Appeals err in holding that Md. Code Ann, Agric. § 8-801.1(b)(2) applies to all types of nutrient management records maintained for any period of time where the plain language expressly applies only to nutrient

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<sup>1</sup> Petitioners are Waterkeeper Alliance, Inc., Assateague Coastkeeper, Lower Susquehanna Riverkeeper, Patuxent Riverkeeper, Potomac Riverkeeper, Inc., Severn Riverkeeper, South Riverkeeper, and West/Rhode Riverkeeper, Inc.



management plan summaries maintained by the Maryland Department of Agriculture for three years or less?

3. Did the Court of Special Appeals err in deferring to the Maryland Department of Agriculture's interpretation of Md. Code Ann., Agric. § 8-801.1(b)(2), where that expansive interpretation conflicts with the narrowly-tailored exemption to disclosure provided by the plain language of the statute?

### **STATEMENT OF FACTS**

The Maryland Water Quality Improvement Act of 1998 ("WQIA"), Md. Code Ann. Agric. §§ 8-801–807 (West 2013), requires that every agricultural operation in the State with at least \$2,500 in gross income or 8,000 pounds of live animal weight develop and implement a nutrient management plan.<sup>2</sup> Agric. § 8-803.1. Nutrient management plans manage the application of animal wastes and other fertilizers to prevent nutrient pollution from agricultural land and maintain productivity. Agric. § 8-801(g). Certified

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<sup>2</sup> The Court of Special Appeals' opinion includes a lengthy but irrelevant discussion of the federal and state regulatory framework governing National Pollutant Discharge Elimination System ("NPDES") permits for concentrated animal feeding operations ("CAFOs") and Maryland animal feeding operations ("MAFOs"), and mistakenly refers to the issue presented as one involving the "general permit applicant's identity." *Waterkeeper Alliance*, 211 Md. App. at 422–27, 434, 65 A.3d at 711–714, 718. Maryland's WQIA, which contains the exemption to disclosure at issue in this case, is distinct from the NPDES permitting scheme for CAFOs and MAFOs. The WQIA established Maryland's nutrient management program, which is administered by MDA. That program imposes specific requirements on over 5,000 agricultural operations in the State that meet the above-mentioned criteria, regardless of whether the operation also meets the regulatory definition of a CAFO or a MAFO. The NPDES permitting program, by contrast, is administered by the Environmental Protection Agency ("EPA") and the Maryland Department of the Environment ("MDE"), and only applies to a subset of those agricultural operations required to have nutrient management plans under the WQIA. It is the NPDES permitting scheme that involves "general permit applicants," not the WQIA. For the purposes of this brief, Petitioners will replace the term "general permit applicant" with "individual" or "operator" when discussing the Court of Special Appeals' opinion.

nutrient management consultants prepare the plans, taking into account a series of factors, including the levels of nitrogen and phosphorus in the soil, the levels of nitrogen and phosphorus in the fertilizers to be applied to the land, the amount of nitrogen and phosphorus necessary to achieve the expected crop yield, soil erodibility and nutrient retention capacity and best management practices. *Id.*; Agric. § 8-801.1(a)(1).

Agricultural operations that are required to have and comply with a nutrient management plan must submit a summary of that plan to MDA each year. Agric. § 8-801.1(b)(1); *see also* Md. Code Regs. 15.20.07.06A (2013).<sup>3</sup> MDA, in turn, must “maintain a copy of each summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.” Agric. § 8-801.1(b)(2).

In June and July of 2007, Waterkeeper Alliance submitted a pair of MPIA requests to MDA for nutrient management information. E.140–41; 146–47. MDA denied those requests under State Gov’t § 10-615(2),<sup>4</sup> claiming that inspection of the records would be contrary to Agric. § 8-801.1(b)(2). E.142–43; 148–49. Petitioners subsequently filed a complaint in the Circuit Court for Anne Arundel County against MDA for refusing to release public records pursuant to the MPIA. E.1-32. On May 16, 2008, based on discussions with MDA and the Office of the Attorney General, Waterkeeper Alliance submitted a revised MPIA request for nutrient management information. E.150–51. Waterkeeper Alliance agreed to withdraw its previous requests upon MDA’s good faith response in accordance with Maryland law, including Agric. § 8-801.1(b). E.150.

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<sup>3</sup> Nutrient management plan summaries exist in two forms: 1) an operator’s initial nutrient management plan summary, which includes, *inter alia*, a description of the operation, a summary indicating all nutrient recommendations, and soil analyses; or 2) an operator’s annual implementation report, which includes, *inter alia*, any changes to the operator’s initial submission, the total acreage managed under the plan by crop, and the total nutrients applied by crop. *See* Md. Code Regs. 15.20.07.06A(2), (3).

<sup>4</sup> State Gov’t § 10-615(2)(i), a provision of the MPIA requires a custodian to deny access to a public record if disclosure would be contrary to a State statute.

However, Farm Bureau then filed a complaint for declaratory judgment and injunctive relief to block MDA from releasing information related to nutrient management plans, citing Agric. § 8-801.1(b)(2). E.45–56. The two cases were consolidated and the parties moved for summary judgment.

On February 10, 2009, the Circuit Court for Anne Arundel County granted MDA’s Cross Motion for Summary Judgment and ordered that MDA: 1) disclose nutrient management plan summaries maintained for three years or less, with identifying information redacted; 2) disclose nutrient management plan summaries maintained beyond three years in full, unless the failure to redact identifying information would allow for the identification of an individual for whom a nutrient management plan was prepared with respect to summaries maintained for three years or less; and 3) redact any information from any documents related to nutrient management plans if the information would allow for the identification of an individual from whom a nutrient management plan was prepared with respect to summaries maintained for three years or less. E.177–78

On April 2, 2010, Petitioner Assateague Coastkeeper submitted a new MPIA request to MDA, which was later modified on July 7, 2010. E.238–42. The modified request included, *inter alia*, nutrient management program inspection, compliance, and enforcement data. E.238–42. On September 13, 2010, Farm Bureau filed a complaint in the Circuit Court for Worcester County seeking a temporary restraining order and injunctive relief to prevent MDA from releasing information to Assateague Coastkeeper. E.187–88. After that case was transferred to the Circuit Court for Anne Arundel County and dismissed, Farm Bureau filed a Motion for Clarification of the 2009 Order interpreting Agric. § 8-801.1(b)(2). E.218–24.

On July 14, 2011, the Circuit Court for Anne Arundel County granted Farm Bureau’s motion, and ordered that MDA “must redact any information from any documents subject to disclosure under the [MPIA] that are related to Nutrient Management Plans if such information would allow for the identification of the

individual for whom the Nutrient Management Plan was prepared with respect to those Nutrient Management Plan Summaries that have been maintained by [MDA] for three years or less.”<sup>5</sup> E.373. In so doing, MDA must “redact only that information which would allow the reader to link a specific individual with a specific nutrient management plan....” E.373. The 2011 Order expanded the Circuit Court’s interpretation of Agric. § 8-801.1(b)(2) to cover several data fields in a nutrient management program compliance and enforcement spreadsheet generated by MDA in response to Assateague Coastkeeper’s MPIA request. E.374. The Circuit Court specifically instructed MDA to redact visit type, operation, type, total farmed acres, and compliance comments, to the extent that those comments contained information that could be used to link a specific individual to a specific plan. E.374.

Petitioners filed a timely Notice of Appeal of the Circuit Court’s 2011 Order in the Court of Special Appeals. On May 2, 2013, the Court of Special Appeals affirmed the Circuit Court’s interpretation of Agric. § 8-801.1(b)(2), ultimately concluding that the Legislature intended for nutrient management documents to be disclosed regardless of year, but that MDA must protect any information that would reveal a specific individual’s

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<sup>5</sup> With regard to nutrient management plan summaries and annual implementation reports, the 2011 Order instructed MDA to “redact the entries for name, address, signature, and unique identification number . . . .” E. 374–75. Petitioners do not dispute that Agric. § 8-801.1(b)(2) requires MDA to redact those fields of identifying information from nutrient management plan summaries and annual implementation reports submitted to MDA within the last three years to comply with Agric. § 8-801.1(b). Moreover, Petitioners do not challenge that Agric. § 8-801.1(b) would require MDA to redact those fields of identifying information from a nutrient management plan, if that plan was submitted to MDA within the last three years in lieu of a summary to comply with Agric. § 8-801.1(b). However, nutrient management plans or plan summaries submitted to MDA for other purposes, separate and apart from the recordkeeping requirement enumerated in Agric. § 8-801.1(b) (i.e., to receive taxpayer funding for cost-share practices) are not subject to any exemptions under the MPIA and MDA should disclose those documents in full upon request.

identity when disclosing plan summaries as well as any other documents related to nutrient management plans. *See Waterkeeper Alliance*, 211 Md. App. 417, 65 A.3d 708.

### **STANDARD OF REVIEW**

The standard of review is *de novo*. *Schisler v. State*, 394 Md. 519, 535, 907 A.2d 175, 184 (2006) (stating that where the question before an appellate court “involves the interpretation and application of Maryland constitutional, statutory, and case law,” the standard of review is *de novo*.); *see also Comptroller of the Treasury v. Gannett Co., Inc.*, 356 Md. 699, 707, 741 A.2d 1130, 1134 (1999) (“The lower court’s interpretations of law enjoy no presumption of correctness on review; the appellate court must apply the law as it understands it to be.”) (*quoting Rohrbaugh v. Estate of Stern*, 305 Md. 443, 447 n.2, 505 A.2d 113, 115 n.2 (1986)).

### **ARGUMENT**

#### **I. Exemptions under the Maryland Public Information Act must be construed narrowly and in favor of disclosure.**

The Maryland Public Information Act (“MPIA”), Md. Code Ann., State Gov’t §§ 10-611-630 (West 2013), as it has been interpreted and applied by this Court, creates “a public policy and general presumption in favor of disclosure” of public records. *Md. Dep’t of State Police v. Md. State Conference of NAACP Branches*, 430 Md. 179, 190, 59 A.3d 1037, 1043 (2013) (*quoting Office of Governor v. Washington Post Co.*, 360 Md. 520, 544, 759 A.2d 249, 262 (2000)); *see also* State Gov’t § 10-612(b) (stating that the MPIA “shall be construed in favor of permitting inspection of a public record, with the least cost and least delay . . .”). In furtherance of that presumption, exemptions to disclosure must be construed “narrowly and in favor of disclosure.” *Fioretti v. Md. State Bd. of Dental Exam’rs*, 351 Md. 66, 77, 716 A.2d 258, 264 (1998) (citations omitted).

The Court of Special Appeals disregarded these general principles when it affirmed the Circuit Court's broad interpretation of Agric. § 8-801.1(b)(2), which requires MDA to withhold information clearly beyond the scope of the limited exemption provided by that statute.

*A. The limited exemption to disclosure provided by Agric. § 8-801.1(b)(2) only applies to identifying information in nutrient management plan summaries maintained by MDA for three years or less.*

Pursuant to the MPIA, “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” State Gov’t § 10-612(a). This Court has also long recognized that “the provisions of the [MPIA] reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government.” *A.S. Abell Publ’g. Co. v. Mezzanote, et al*, 297 Md. 26, 32, 464 A.2d 1068, 1071 (1983).

The MPIA requires the disclosure of public records, “unless the requested records are within the scope of a statutory exemption.” *Faulk v. State’s Att’y for Hartford County*, 299 Md. 493, 506–07, 474 A.2d 880, 887 (1984) (citing *Superintendent, Md. State Police v. Henschen*, 279 Md. 468, 473, 369 A.2d 558, 561 (1977)); State Gov’t § 10-613(a)(1) (stating that custodians of public records must allow any person to inspect any public record at any reasonable time, “[e]xcept as otherwise provided by law.”). State Gov’t § 10-615(2)(i) exempts public records, or any part of a public record, from disclosure if it would be contrary to a State statute. In this case, MDA claimed that the disclosure of certain nutrient management information would be contrary to Agric. § 8-801.1(b)(2), which requires MDA to “maintain a copy of each [nutrient management plan] summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.”<sup>6</sup>

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<sup>6</sup> The agency withholding information “bears the burden in sustaining its denial of the inspection of public records.” *Fioretti*, 351 Md. at 78, 716 A.2d at 264.

Such exemptions to disclosure under the MPIA must be interpreted “narrowly and in favor of disclosure.” *Fioretti*, 351 Md. at 77, 716 A.2d at 264 (citations omitted). Moreover, the MPIA’s “preference for disclosure mitigates against any interpretation that would expand the scope of an enumerated exception to the Act.” *Haigley v. Dep’t of Health and Mental Hygiene*, 128 Md. App. 194, 226, 736 A.2d 1185, 1201 (Md. Ct. Spec. App. 1999) (citing *Kirwan v. The Diamondback*, 352 Md. 74, 721 A.2d 196 (1998)). In contrast, the Circuit Court’s interpretation, affirmed by the Court of Special Appeals, greatly expands the scope of the exemption to disclosure provided by Agric. § 8-801.1(b)(2) from identifying information in nutrient management plan summaries to any information in any documents related to nutrient management plans. *Compare* Agric. § 8-801.1(b)(2) (requiring that MDA maintain a copy of each *summary* for three years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared) (emphasis added) *with* E.373 (requiring that MDA redact *any* information from *any* documents subject to disclosure under the [MPIA] that are related to Nutrient Management Plans if such information would allow for the identification of the individual for whom the Nutrient Management Plan was prepared . . . .”) (emphasis added).

This Court has repeatedly rejected similar attempts to expand enumerated exemptions to disclosure to encompass additional documents or information. In *Md. State Conference of NAACP Branches*, this Court declined to broadly read the MPIA’s personnel records exemption, State Gov’t § 10-616(i), as prohibiting the disclosure of redacted racial profiling complaints against State Troopers. 430 Md. at 194–96, 59 A.3d at 1046–47. In *Washington Post. Co.*, this Court determined that the MPIA’s exemptions for letters of reference, personnel records, commercial information, and interagency or intra-agency letters or memoranda, State Gov’t §§ 10-616(d), (i), 10-617(d), 10-618(b), did not protect the Governor’s phone records from disclosure. 360 Md. at 546–53, 759 A.2d at 263–67. In *Kirwan*, this Court determined that parking tickets issued to University of Maryland coaches and student athletes were not within the MPIA’s

personnel records or financial information exemptions, State Gov't §§ 10-616(d), 10-617(f). 352 Md. at 84, 87, 721 A.2d at 200–201, 202. These cases deal with exemptions that contemplate broad, non-exclusive categories of documents or information that do not specifically enumerate the universe of records that could be exempt from disclosure. *See, e.g.*, State Gov't § 10-616(i) (exempting personnel records, which includes applications, performance ratings, or scholastic achievement information); § 10-617(f) (exempting financial information, described as “information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.”). Nonetheless, this Court has consistently interpreted those exemptions, which are far less specific than Agric. § 8-801.1(b)(2), narrowly and in favor of disclosure.

Exemptions to disclosure provided by State Gov't § 10-615 are similarly subject to the well-established directive to interpret exemptions narrowly and in favor of disclosure. In *Haigley*, the Court of Special Appeals properly construed an exemption to disclosure provided by a different state statute in accordance with the general principles governing the interpretation and application of the MPIA. 128 Md. App. 194, 736 A.2d 1185. There, the Court of Special Appeals rejected the Department of Health and Mental Hygiene's (“DHMH”) broad interpretation of the confidential research and study records exemption enumerated in Health–Gen. §§ 4-101 and 102. *Id.* at 213–14, 228, 736 A.2d at 1195, 1202–03. In its reported opinion, the Court of Special Appeals recognized that State Gov't § 10-615 provides exemptions to disclosure under the MPIA, and reiterated that such exemptions must be interpreted narrowly. *Id.* at 209, 1192–93 (*citing Fioretti*, 351 Md. at 77, 716 A.2d at 258). The Court concluded that DHMH's attempt to withhold all information related to case investigations as confidential “research” or “study” records was contrary to the MPIA, as well as Health–Gen. §§ 4-101 and 102.<sup>7</sup> *Id.* at 213–14, 736

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<sup>7</sup> As with the cases interpreting enumerated exceptions to the MPIA discussed *supra*, the Court of Special Appeals in *Haigley* was presented an exemption far less specific than



A.2d at 1195. In reaching that conclusion, the Court considered its obligation to “safeguard the provisions of the [M]PIA” and “construe its provisions in favor of permitting inspection of a public record,” as well as DHMH’s burden to establish “an exemption to the liberal disclosure provisions of the [M]PIA.” *Id.* at 214, 736 A.2d at 1195.

Agric. § 8-801.1(b)(2) provides a specific, limited exemption to disclosure that only applies to nutrient management plan summaries maintained by MDA for three years or less. Furthermore, it only restricts public access to information in those summaries that identifies the plan holder. The Circuit Court and the Court of Special Appeals, however, improperly expanded the scope of that provision to reach any information on any records related to nutrient management plans maintained by MDA for any period of time that might lead to the identification of an individual for whom a plan was prepared. Similar to DHMH’s overly broad interpretation of Health–Gen. §§ 4-101 and 4-102 put forth in *Haigley*, the expansive and speculative interpretation of Agric. § 8-801.1(b)(2) put forth here is inconsistent with the general principles underlying the MPIA and the plain language of the exemption itself.<sup>8</sup>

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Agric. § 8-801.1(b)(2). Health–Gen. §§ 4-101 and 102 contemplate several different types of documents as confidential research and study records, including records, reports, statements, or other information, *Haigley*, 128 Md. App. at 210, 736 A.2d at 1193, whereas Agric. § 8-801.1(b)(2) expressly applies only to nutrient management plan summaries.

<sup>8</sup> The speculative nature of this interpretation is apparent in MDA’s Response to Farm Bureau’s Motion for Clarification, where it discusses the fields of information to be redacted from the compliance and enforcement spreadsheet: “The ‘operation type,’ for example, will reflect what kind of farm the farmer operates, whether it be a ‘crop’ farm, an ‘animal’ feed operation, or a poultry house, which is reflected by the ‘no land’ designation. While this information does not, by itself, reveal much about the farm’s nutrient management practices, it *begins* to provide plan information that a reader *could* use to match up a specific farmer with a specific nutrient management plan, and, in so doing, ‘allow [sic] for the identification of the individual for whom the Nutrient Management Plan was prepared.’” E.273 (emphasis added).

Agric. § 8-801.1(b)(2) plainly instructs MDA to protect identifying information in nutrient management plan summaries maintained for three years or less. It gives MDA absolutely no authority to withhold any additional information on any additional documents from disclosure under the MPIA, particularly considering that such exemptions must be construed narrowly and in favor of disclosure. However, in this case, the Court of Special Appeals deviated from this Court's precedent and its own prior reasoning, and erred in affirming the Circuit Court's broad interpretation of Agric. § 8-801.1(b)(2).

*B. The Court of Special Appeals improperly relied on cases from other jurisdictions interpreting wholly separate statutes that have no bearing on the scope of the exemption provided by Agric. § 8-801.1(b)(2).*

It is undisputed that nutrient management plans, summaries, and other related documents made or received by MDA in administering the WQIA are public records,<sup>9</sup> and therefore subject to disclosure under the MPIA unless a statutory exemption applies. The only statutory exemption at issue in this case is Agric. § 8-801.1(b)(2), the scope of which is entirely a matter of Maryland state law. Decisions from other jurisdictions dealing with different statutes simply have no bearing on the exemption to disclosure at issue here.

The various out-of-state and federal decisions cited by the Court of Special Appeals in support of its efforts to broaden the exemption provided by Agric. § 8-801.1(b)(2) are completely irrelevant. *See Waterkeeper Alliance*, 211 Md. at 446–51, 65 A.3d at 725–28. Those cases deal with entirely different state or federal statutes that are applicable in different circumstances under different regulatory schemes and, in some instances, involve unrelated documents or information. *See, e.g., Cmty. Ass'n for*

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<sup>9</sup> A public record includes “any documentary material that (i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business.” State Gov't § 10-611(h)(1).

*Restoration of the Env't v. Dep't of Ecology*, 205 P.3d 950, 961–63 (Wash Ct. App. 2009) (affirming the approval of the Department of Ecology's CAFO general permit, which allows site-specific operational information to be redacted from nutrient management plans only if approved by the Department pursuant to a Washington state statute that allows owners or operators to make such requests for any operational records submitted to the Department.); *Idaho Conservation League, Inc. v. Idaho State Dep't of Agric.*, 146 P.3d 632, 636–37 (Idaho 2006) (affirming the district court's decision that Idaho nutrient management plans are public records; that plans submitted outside of the Idaho One Plan computer format do not fall under any exemption to disclosure; but that those plans submitted via One Plan are exempt from disclosure pursuant to an Idaho state statute specifically providing that they "shall be kept confidential and shall be exempt from disclosure."); *Zanoni v. U.S. Dep't of Agric.*, 605 F.Supp.2d 230, 232 (D.D.C. 2009) (interpreting a provision of the federal Food Conservation and Energy Act as exempting certain information from disclosure under the Freedom of Information Act, where the FCEA specifically provides that the U.S. Department of Agriculture "shall not disclose . . . information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming, or conservation practices or the land itself, in order to participate in programs of the Department.").

Agric. § 8-801.1(b)(2) is a Maryland state statute that provides a very limited exemption to disclosure under State Gov't § 10-615(2). The MPIA and Maryland case law require that such exemptions be construed narrowly and in favor of disclosure. As such, only identifying information on nutrient management plan summaries maintained by MDA for three years or less is exempt from disclosure under the MPIA.

**II. The rules of statutory construction require an interpretation of Agric. § 8-801.1(b)(2) that adheres to the clear and unambiguous language of the statute itself.**

In the absence of ambiguity, statutory construction begins and ends with the plain language of the statute in question. *See Bowen v. City of Annapolis*, 402 Md. 587, 613–

14, 937 A.2d 242, 257–58 (2007) (*quoting Kushnell v. Dep’t of Natural Res.*, 385 Md. 563, 576–78, 870 A.2d 186, 193–94 (2005)). “In construing the plain language, a court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its application.” *Id.* at 613, 257–58 (*quoting Kushnell*, 385 Md. at 576–78, 870 A.2d at 193–94). However, the Court of Special Appeals did exactly that when it affirmed the Circuit Court’s interpretation of Agric. § 8-801.1(b)(2), which improperly extends the application of that provision beyond its unambiguous language. In addition, the Court of Special Appeals disregarded clear precedent by inquiring into other indicia of legislative intent in a strained effort to contradict the plain meaning of the statute. Lastly, the Court of Special Appeals improperly attempted to harmonize Agric. § 8-801.1(b)(2) with another statute in the Agriculture Article that addresses a different subject altogether, using a flawed analysis that rendered the three year time limitation in Agric. § 8-801.1(b)(2) meaningless.

A. *The clear and unambiguous language of Agric. § 8-801.1(b)(2) only protects identifying information in nutrient management plan summaries maintained by MDA for three years or less.*

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.” *Bowen*, 402 Md. at 613, 937 A.2d at 257 (*quoting Kushnell*, 385 Md. at, 576–78, 870 A.2d at 193–94). The inquiry into statutory interpretation begins with the plain language of the statute, and, if that language “is unambiguous when construed according to its ordinary and every day meaning, [courts] give effect to the statute as it is written.” *Id.* at 613–14, 937 A.2d 257–58 (*quoting Kushnell*, 385 Md. at, 576–78, 870 A.2d at 193–94). In the absence of ambiguity, courts do not inquire further into legislative intent. *Id.* (*quoting Kushnell*, 385 Md. at, 576–78, 870 A.2d at 193–94) (internal quotations omitted).

Reading the plain language of Agric. § 8-801.1(b)(2) in accordance with its everyday meaning, the statute clearly and unambiguously applies to a single type of

document – nutrient management plan summaries – maintained by MDA for a specific period of time – three years or less. Moreover, Agric. § 8-801.1(b)(2) only protects information contained in those summaries that identifies the plan holder. Giving effect to the statute as written, it provides a limited exemption to disclosure for identifying information contained in nutrient management plan summaries maintained by MDA for three years or less.<sup>10</sup> Agric. § 8-801.1(b)(2) does not contemplate any other information contained in any other documents. Therefore, the Court of Special Appeals erred in affirming the Circuit Court’s interpretation of Agric. § 8-801.1(b)(2), which improperly extends the scope of the exemption to disclosure provided by the unambiguous statutory language.

*B. The Court of Special Appeals erred when it inquired beyond, and reached conclusions that contradicted, the unambiguous language of Agric. § 8-801.1(b)(2).*

The Court of Special Appeals improperly departed from this Court’s precedent when it inquired into legislative history and other indicia of legislative intent as a means to circumvent the unambiguous language of Agric. § 8-801.1(b)(2). If the statutory language is unambiguous, as it is here, “the inquiry as to legislative intent ends; [courts] do not need to resort to the various, and sometimes inconsistent, external rules of construction, for the Legislature is presumed to have meant what it said and said what it

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<sup>10</sup> The Court of Special Appeals strongly indicated that the language of Agric. § 8-801.1(b)(2) is unambiguous. *Waterkeeper Alliance*, 211 Md. App. at 437–38, 65 A.3d at 720 (stating that “even when the language of a statute is free from ambiguity, in the interest of completeness, we may explore the legislative history of the statute under review” and exploring the legislative history as a result.) (internal quotations and citations omitted). The Circuit Court for Anne Arundel County also stated that the language of Agric. § 8-801.1(b)(2) is clear and unambiguous, *see* E.183 (finding “that the language at issue in Md. Code Ann., Agric. § 8-801.1(b)(2) is clear and unambiguous.”), as did MDA. *See* E.126 (stating that the statutory language is unambiguous); E.271–72 (stating that that Agric. § 8-801.1(b)(2) “specifically applies to the retention of nutrient management plan summaries alone.”).

meant.” *Bowen*, 402 Md. at 614, 937 A.2d at 258 (quoting *Kushnell*, 385 Md. at, 576–78, 870 A.2d at 193–94) (internal quotations omitted).

In *Mayor and City Council of Baltimore v. Chase*, this Court articulated a very limited exception to the general rule that a court’s inquiry into legislative intent begins and ends with the unambiguous statutory language:

even when the language of a statute is free from ambiguity, in the interest of completeness we may, and sometimes do explore the legislative history of the statute under review. We do so, however, to look at the purpose of the statute and compare the result obtained by use of its plain language with that which results from when the purpose of the statute is taken into account. In other words, the resort to legislative history is a *confirmatory* process; it is not undertaken to *contradict* the plain meaning of the statute.

360 Md. 121, 131, 756 A.2d 987, 993 (2000) (emphasis added) (citations and internal quotations omitted). The “interest of completeness” exception is predicated on the well-settled notion that “a court may not as a general rule surmise a legislative intention contrary to the plain language of a statute or insert exceptions not made by the legislature.” *Id.* (quoting *Coleman v. State*, 281 Md. 538, 546, 380 A.2d 49, 54 (1977)).

Agric. § 8-801.1(b)(2) clearly and unambiguously applies to nutrient management plan summaries maintained for three years or less, and only protects the information in those documents that identifies the plan holder. The Court of Special Appeals, however, improperly invoked the “interest of completeness” exception to reach a contradictory result, that Agric. § 8-801.1(b)(2) extends to other information in other documents. In reaching its conclusion, the Court of Special Appeals disregarded the general rule underlying the “interest of completeness” exemption and “surmised a legislative intention contrary to the plain language of the statute,” namely that the Legislature intended for MDA to protect information in any records related to nutrient management plans maintained for any period of time. *See Waterkeeper Alliance*, 211 Md. App. 454,

65 A.3d 730. That interpretation essentially replaces the limited exemption provided by Agric. § 8-801.1(b)(2) with a far broader exemption that includes all nutrient management information maintained by MDA.<sup>11</sup>

The Court of Special Appeals disregarded the rules of statutory construction by extending its inquiry beyond the unambiguous language of Agric. § 8-801.1(b)(2) “in the interest of completeness” to reach a contradictory conclusion that expands the application of the statute. *See Chase*, 360 Md. at 131, 756 A.2d at 993; *Whitely v. Md. State Bd. of Elections*, 429 Md. 132, 152, 155, 55 A.3d 37, 49, 51 (2012) (concluding that the statutory language was unambiguous and exploring legislative history in support of that interpretation). As a result, the reported opinion in this case sets a dangerous precedent of circumventing the plain meaning of an unambiguous statute under the pretense of an interest in completeness.

*C. The Court of Special Appeals further erred when it attempted to harmonize Agric. § 8-801.1(b)(2) with a statute addressing a different subject.*

In improperly looking beyond the plain language of the statute, the Court of Special Appeals strained to harmonize the time limitation in Agric. § 8-801.1(b)(2) with the lack of a time limitation in Agric. § 8-306(b), an unrelated section of the Agriculture Article outside of the WQIA. This Court has often stated that

[w]here the statute to be construed is part of a statutory scheme, the legislative intention is not determined from that statute alone, rather it is to

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<sup>11</sup> In its analysis, the Court of Special Appeals considered extraneous legislative history that does not relate to the scope of the protection provided by Agric. § 8-801.1(b)(2). *Waterkeeper Alliance*, 211 Md. App. at 438–440, 65 A.3d at 720–21. The WQIA was amended in 2004 to require that operators submit a plan summary in lieu of a full nutrient management plan. However, revising the document type sheds no light on the legislative intent behind protect identifying information in nutrient management plans in the first place. In fact, there is no legislative history that explains why the Legislature chose to include the limited exemption to disclosure in Agric. § 8-801.1(b)(2).

be discerned by considering it in light of the statutory scheme. When, in that scheme, two statutes, enacted at different times and not referring to each other *address the same subject*, they must be read together, i.e., interpreted with reference to one another, and harmonized, to the extent possible, both with each other and with other provisions of the statutory scheme.

*Chase*, 360 Md. at 129, 756 A.2d at 992 (emphasis added) (citations and internal quotations omitted).

Agric. §§ 8-801.1(b)(2) and 8-306(b) do not address the same subject matter and are not inconsistent as written. Agric. § 8-801.1(b)(2), a provision of the WQIA, lists the factors considered in developing nutrient management plans, imposes a recordkeeping requirement for filing plan summaries with MDA, and specifically instructs MDA to protect identifying information in those summaries for three years. In contrast, Agric. § 8-306(b), an unrelated provision of the Soil Conservation Title outside of the WQIA, describes the authority given to soil conservation district supervisors and specifically instructs those supervisors to protect identifying information in soil conservation and water quality plans with no time limitation. To the extent supervisors make information available to MDA for statistical purposes, Agric. § 8-306(b)(2) instructs MDA to protect that information in the same manner. In short, Agric. § 8-801.1(b)(2) protects information on one type of document for a specific period of time, while Agric. § 8-306(b) protects information on a different type of document indefinitely. As such, Agric. §§ 8-801.1(b)(2) and 8-306(b) do not address the same subject matter and are not inconsistent as written. Therefore, the Court of Special Appeals erred in attempting to harmonize the two provisions.

Even if it were proper for the Court of Special Appeals to harmonize the statutes, its attempt to do so was flawed, as it rendered the “for 3 years” clause meaningless in the context of Agric. § 8-801.1(b)(2). When harmonizing two provisions of a statutory scheme, “[n]either statute should be read . . . so as to render the other, or any portion of it, meaningless, surplusage, superfluous, or nugatory.” *Chase*, 360 Md. at 129, 756 A.2d at



992 (citations omitted). The Court of Special Appeals’ comparison of the time-limited language in Agric. § 8-801.1(b)(2) with the absence of any time-limited language in Agric. § 8-306 led it to conclude that the three year clause in the former was not related to protecting identifying information. That interpretation flatly contradicts the plain language of Agric. § 8-801.1(b)(2) and gives the three year time period no effect in the statute.<sup>12</sup> As MDA has argued in comparison to other statutes in the Agriculture Article, “[t]he different, time-limited language that the General Assembly used with respect to [nutrient management plan] information must be given a different, time-limited effect.” E.128.

Agric. § 8-801.1(b)(2) specifically states that MDA must maintain nutrient management summaries “for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.” Pursuant to the Court of Special Appeals’ interpretation, however, MDA must continue to withhold information on nutrient management plan summaries maintained beyond three years. Thus, the Court of Special Appeals effectively disregarded the “for 3 years” clause and rendered it meaningless in the context of Agric. § 8-801.1(b)(2).

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<sup>12</sup> The Court of Special Appeals “deduced” that the three year time period in Agric. § 8-801.1(b)(2) “regard[s] the recommendation of soil testing.” *Waterkeeper Alliance*, 211 Md. App. at 446, 65 A.3d at 725. However, that interpretation has no effect on the manner or length of time that MDA maintains nutrient management plan summaries. MDA is not permitted to simply discard nutrient management plan summaries after three years based on soil testing, or for any other reason. *See* E.127 n.2 (stating that MDA retains nutrient management plan documents for more than three years for its own administrative purposes, and consistent with the Maryland Public Records Act); *see also* E.184 (stating that MDA is “already subject to requirements governing the archiving of documents that it receives.”).

**III. An administrative agency’s interpretation of a statute that it administers is not entitled to deference when that interpretation is inconsistent with the unambiguous statutory language.**

Courts should not defer to an administrative agency’s interpretation of a statute that it administers if that interpretation “conflicts with the unambiguous statutory language.” *Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 446, 697 A.2d 455, 459 (1997) (citing *Falik v. Prince George’s Hosp.*, 322 Md. 409, 416, 588 A.2d 324, 327 (1991)). An agency’s interpretation cannot override unambiguous statutory language, nor may it extend the scope of the statute beyond its plain meaning. *Falik*, 322 Md. at 416, 588 A.2d at 327 . The Court of Special Appeals erred in deferring to MDA’s interpretation of Agric. § 8-801.1(b)(2), which is inconsistent with the plain meaning of the statute and expands the scope of the exemption to disclosure provided by that section.

*A. The Court of Special Appeals improperly deferred to MDA’s expansive interpretation of Agric. § 8-801.1(b)(2).*

While courts typically give deference to an agency’s “consistent and long-standing” interpretation of a statute that it administers, such deference is not appropriate where the agency’s interpretation is inconsistent with the plain language of the statute. *Marriott Employees Fed. Credit Union*, 346 Md. at 446, 697 A.2d at 459 (“An administrative agency’s construction of a statute [it administers] is not entitled to deference...when it conflicts with the unambiguous statutory language.”) (citing *Falik*, 322 Md. at 416, 588 A.2d at 327 (“[W]hen statutory language is unambiguous, administrative constructions, no matter how well entrenched, are not given weight.”)). An agency’s interpretation of an unambiguous statute simply “cannot override the plain meaning of the statute or extend its provisions beyond the clear import of the language employed.” *Falik*, 322 Md. at 416, 588 A.2d at 327 (quoting *State Dep’t of Assessments and Taxation v. Greyhound Computer Corp.*, 271 Md. 575, 589, 320 A.2d 40 (1984)).

Agric. § 8-801.1(b)(2) clearly and unequivocally applies only to nutrient management plan summaries maintained by MDA for three years or less, and only protects identifying information in those summaries. However, as reflected by its implementing regulation, MDA believes that any nutrient management plan information submitted to the Department should be given the same protection. *See infra* Part III.B That interpretation is plainly inconsistent with Agric. § 8-801.1(b)(2) and extends the scope of that section beyond its unambiguous statutory language. Therefore, the Court of Special Appeals erred in deferring to MDA’s interpretation.

*B. The Court of Special Appeals erred to the extent it relied on MDA’s implementing regulation, which improperly extends the scope of Agric. § 8-801.1(b)(2).*

In deferring to MDA, the Court of Special Appeals relied on the agency’s expansive implementing regulation, which states that MDA “shall keep, and shall protect the confidentiality of, all nutrient management plan information submitted, so as to protect the identity of the person for whom the plan was developed.” Md. Code Regs. 15.20.07.06A(4). Regulations promulgated by an administrative agency must be within the authority granted by the statute being administered. An agency is not a lawmaking body and must follow “the letter and policy of the statute under which the administrative agency acts.” *Md. State Police v. Warwick Supply & Equip. Co., Inc.*, 330 Md. 474, 481, 624 A.2d 1238, 1241 (1993) (citations omitted). As such, an agency may not use its rulemaking authority to essentially enact legislation “by issuing a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends, enlarges, subverts, impairs, limits, or restricts the act being administered.” *Id.* (citations and quotations omitted). While “[a]dministrative agencies have broad authority to promulgate regulations . . . the exercise of that authority, granted by the Legislature, must be consistent, and not in conflict, with the statute the regulations are intended to implement.” *Dep’t of Human Res., Balt. City Dep’t of Soc. Servs. v. Hayward*, 426 Md. 638, 658, 45 A.3d 224, 236 (2012). When a regulation does conflict with the statute it is

intended to implement, this Court has “consistently held that the statute must control.” *Id.* (citing *Lussier v. Md. Racing Comm’n*, 343 Md. 681, 688, 684 A.2d 34, 39 (1994)).

MDA’s implementing regulation, which imposes a broad requirement for the agency to protect all nutrient management plan information, improperly “adds to, extends, [and] enlarges” the limited scope of Agric. § 8-801.1(b)(2), which expressly applies only to nutrient management plan summaries maintained for three years or less. As a result, the implementing regulation is inconsistent with the unambiguous statutory language of Agric. § 8-801.1(b)(2). As this Court stated in *Hayward*, when presented with a conflict between the statute and its implementing regulation, the statute controls. As such, the Court of Special Appeals erred when it disregarded the plain language of § 8-801.1(b)(2) in favor of MDA’s expansive regulation.

Deference to MDA’s implementing regulation is particularly inappropriate in the context of the MPIA. First, a state regulation is not a source of law that exempts information from disclosure. *See* State Gov’t § 10-615 (enumerating required exemptions to disclosure, including state statutes but not state regulations). During the course of this litigation, even MDA has recognized that its regulation provides no basis to exempt information from disclosure. *See* E.129 (stating that Md. Code Regs. 15.20.07.06(A)(4) “cannot form the basis for refusing to disclose NMP information under the [M]PIA” and recognizing that the statute controls in the event of a conflict). Second, as the Court of Special Appeals recognized in *Haigley*, “[t]he deference we would ordinarily accord to the agency’s interpretation of its own regulations is tempered by our obligation to safeguard the objectives of the [M]PIA, which instructs us to construe its provisions ‘in favor of permitting inspection of a public record.’” 128 Md. App. at 213–14, 736 A.2d at 1195(citing State Gov’t 10-612(b)). Instead of construing Agric. § 8-801.1(b)(2) in favor of disclosure, MDA’s implementing regulation seeks to withhold additional nutrient management plan information submitted to MDA in any form at any time.

## **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that this Court reverse the Court of Special Appeals' affirmation of the Circuit Court for Anne Arundel County's decision, vacate the Circuit Court's orders interpreting Agric. § 8-801.1(b)(2), and hold that Agric. § 8-801.1(b)(2) only applies to nutrient management plan summaries maintained by the Maryland Department of Agriculture for three years or less, and only exempts identifying information on those summaries, defined as name, address, signature, and unique identification number, from disclosure under the Maryland Public Information Act.

**STATEMENT REGARDING FONT USED AND TYPE SIZE**

The font used is Times New Roman. The size of the font is 13.

## CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of December 2013, a copy of the foregoing was sent via first class mail to:


Adam Snyder  
Assistant Attorney General  
200 St. Paul Place  
20th Floor  
Baltimore, Maryland 21201

Craig A Nielsen  
Thomas F. Filbert  
Assistant Attorneys General  
Maryland Department of Agriculture  
50 Harry S. Truman Boulevard  
Annapolis, Maryland 21401

*Counsel for Respondent Maryland Department of Agriculture*

Margaret M. Witherup, Esq.  
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC  
The Garrett Building  
233 East Redwood Street  
Baltimore, Maryland 21202

*Counsel for Respondent Maryland Farm Bureau, Inc.*



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Leah Kelly  
Environmental Integrity Project  
1000 Vermont Avenue NW, Suite 1100  
Washington, DC 20005  
(202) 263-4448 (office)  
(202) 296-8822 (fax)  
lkelly@environmentalintegrity.org

## ATTACHMENTS

### **I. Maryland Statutes**

#### ***A. Md. Code Ann., Agric. § 8-306. Supervisors' powers***

(a) A soil conservation district constitutes a political subdivision of the State, and a public body corporate and politic, exercising public powers. The supervisors may:

(1) Conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed and publish the results, if the research program is executed in cooperation with the State, the United States, or any of their agencies;

(2) Disseminate information concerning preventive and control measures;

(3) Conduct demonstration projects within the district on State owned or controlled land, with the cooperation of the agency administering and having jurisdiction of them, or on any land within the district upon obtaining the consent of the land occupier or the possessor of the necessary rights or interests in the land, in order to demonstrate by example the means, methods, and measures for conserving soil and soil resources, and preventing and controlling soil erosion in the form of soil blowing and washing;

(4) Carry out preventive and control measures within the district including engineering operations, cultivation methods, the growing of vegetation, changes in land use, and the measures listed in § 8-102(c) of this title, on State owned or controlled land, with the cooperation of the agency administering and having jurisdiction of them, or on any other land within the district upon obtaining the consent of the land occupier or the possessor of the necessary rights or interests in the land;

(5) Cooperate or enter into agreements with any person to furnish financial or other aid to any government or private agency or any land occupier within the district, in carrying on erosion control and prevention operations within the district, subject to conditions the supervisors deem necessary to advance the purposes of this subtitle;

(6) Obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, or otherwise, any real or personal property or rights or interests in it, which shall be exempt from State, county, or municipal taxation;



(7) Maintain, administer, and improve any acquired properties, receive income from the properties and expend the income to carry out the purposes and provisions of this subtitle;

(8) Sell, lease, or otherwise dispose of its property or interests in it to further the purposes and the provisions of this subtitle;

(9) Make available to land occupiers within the district, on terms the supervisors prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and other material or equipment, to assist land occupiers in conserving soil resources and preventing and controlling soil erosion;

(10) Construct, improve, and maintain structures necessary or convenient for the performance of any of the operations authorized in this title;

(11) Develop comprehensive plans for conserving soil resources and controlling and preventing soil erosion within the district, if the plans specify in reasonable detail, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, cultivation methods, the growing of vegetation, cropping programs, tillage practices, and changes in land use;

(12) Publish the plans and information and bring them to the attention of land occupiers within the district;

(13) Take over, by purchase, lease, or otherwise, and administer any soil conservation, erosion control, or erosion prevention project located within the district undertaken by the United States, the State, or any of their agencies;

(14) Act as agent for the United States, the State, or any of their agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries;

(15) Accept gifts in money, services, materials, or otherwise from the United States, the State, or any of their agencies and to use or expend them to carry out the operations of the districts;

(16) Borrow money on its negotiable paper to carry out its powers and duties;

(17) Approve or disapprove plans for clearing, grading, transporting, or otherwise distributing soil pursuant to § 4-105(a) of the Environment Article and to adopt

general criteria and specific written recommendations concerning the control of erosion and siltation of pollution associated with these activities;

(18) Recommend a fee system to cover the cost of reviewing the grading and sediment control plans. Subject to § 8-311 of this subtitle, any recommended fee shall take effect upon enactment by the local governing body. Any fees collected pursuant to this fee system shall be supplementary to county and State funds and may not (i) be used to reduce county or State funds, and (ii) exceed the cost of reviewing the plans;

(19) Establish and implement a fee system to cover the cost of inspecting sites with approved sediment control plans pursuant to a contractual agreement with the Department of the Environment under § 4-103(f) of the Environment Article;

(20) Sue and be sued in the name of the district; have a seal which shall be judicially noticed; have perpetual succession unless terminated; make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and adopt, amend, and repeal, rules and regulations not inconsistent with this title, to effectuate its purposes and powers;

(21) Provide contracting services, equipment, and supplies to landowners; establish prices for the sale of these items; and promulgate any rule or regulation necessary to implement these powers; and

(22) In addition to the powers enumerated in this title, displace or limit economic competition in the exercise of any power specified in this title; provided that the powers granted to a district pursuant to this paragraph shall not be construed:

(i) To grant to the district powers in any substantive area not otherwise granted to the district by other public general or public local law;

(ii) To restrict the district from exercising any power granted to the district by other public general or public local law or otherwise;

(iii) To authorize the district or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

(iv) To preempt or supersede the regulatory authority of any State department or agency under any public general law.

(b)(1) The supervisor shall maintain information from a soil conservation and water quality plan in a manner that protects the identity of the person for whom the plan is prepared. However, the supervisors shall make a soil conservation and water quality plan

available to the Department of the Environment for enforcement action under § 4-413 of the Environment Article and the Maryland Department of Agriculture which may use the information for statistical purposes.

(2) The Department shall:

(i) Maintain the information in the manner that protects the identity of the person for whom the plan is prepared; and

(ii) Make any information from a plan available to the Maryland Department of the Environment to support the development of a compliance or enforcement case for purposes of addressing an existing water quality problem in accordance with procedures established between the departments and the State Soil Conservation Committee.

(c) As a condition to extending any benefit of this title to any land not owned or controlled by the State or any of its agencies, or to performing work on them, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring benefits, and may require the land occupier to enter into and perform agreements or covenants concerning the permanent use of the land as tends to prevent or control erosion.

(d) The supervisors of two or more districts may cooperate with one another in the exercise of any powers conferred by this title.

(e) No provision relating to acquisition, operation, or disposition of property by other public bodies is applicable to a district, unless the provision specifically so states.

***B. Md. Code Ann., Agric. § 8-801. Definitions***

(a) In this subtitle the following words have the meanings indicated.

(b) “Certified nutrient management consultant” means an individual certified by the Department to prepare a nutrient management plan.

(c) “Commercial farm” means a farm that performs activities related to the production and sale of agricultural commodities, including row crops, fruits, vegetables, horticulture, and silvaculture.

(d) “Enhanced efficiency fertilizer” has the meaning stated in § 6-201 of this article.

(e) “Impervious surface” means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

(f) “Natural organic fertilizer” has the meaning stated in § 6-201 of this article.

(g) “Nutrient management plan” means a plan prepared under this subtitle by a certified nutrient management consultant to manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity.

(h) “Organic fertilizer” has the meaning stated in § 6-201 of this article.

(i)(1) “Professional fertilizer applicator” means any person who:

(i) Is certified to apply fertilizer in accordance with § 8-803.4 of this subtitle; and

(ii) Applies fertilizer for hire.

(2) “Professional fertilizer applicator” includes the owner or manager of property, or an employee of a government entity who applies fertilizer within the scope of employment.

(j) “Slow-release nitrogen” means nitrogen in a form that:

(1) Delays its availability for plant uptake and use after application; or

(2) Extends its availability to the plant significantly longer than a reference “rapidly available nutrient” such as ammonium nitrate or urea, ammonium phosphate, or potassium chloride.

(k) “Soil test” means a technical analysis of soil conducted by a laboratory using standards recommended by the University of Maryland.

(l) “Turf” means land, including residential property and publicly owned land that is planted in grass, except land that is used in the sale and production of sod, as defined in § 9-101 of this article.

(m) “Water-soluble nitrogen” means nitrogen that is readily soluble in water.

(n) “Waters of the State” has the meaning stated in § 5-101 of the Environment Article.

***C. Md. Code Ann., Agric. § 8-801.1. Nutrient management plans; factors, filing***

(a)(1) Each nutrient management plan shall be developed considering factors including:

- (i) Levels of bioavailable nitrogen and phosphorus in the soil;
- (ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer materials to be applied;
- (iii) The amount of nitrogen and phosphorus necessary to achieve the expected crop yield for the land that is the subject of the nutrient management plan, as determined by:
  - 1. The field's actual yield record and soil productivity for that crop; or
  - 2. If information concerning actual yield record and soil productivity for a crop is unavailable, relevant information concerning similar fields and soil;
- (iv) Soil erodibility and nutrient retention capacity;
- (v) 1. The best reasonable scientific methods accepted by the Department and the University of Maryland Cooperative Extension Service; or
  - 2. Scientifically validated data for the development of a nutrient management plan as defined by the Department in regulation; and
- (vi) Existing best management practices.

(2) Each nutrient management plan shall provide flexibility for management decisions that may be required by conditions beyond the control of the farmer.

(b)(1) A summary of each nutrient management plan shall be filed and updated with the Department at a time and in a form that the Department requires by regulation.

(2) The Department shall maintain a copy of each summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.

***D. Md. Code Ann., Agric. § 8-803.1. Nutrient management plans; implementation, compliance***

(a) In this section, “gross income” means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.

(b) This section does not apply to:

(1) An agricultural operation with less than \$2,500 in gross income; or

(2) A livestock operation with less than eight animal units defined as 1,000 pounds of live animal weight per animal unit.

(c) The Governor shall provide sufficient funding in each fiscal year’s budget to:

(1) Assist in the development of nutrient management plans;

(2) Meet the technical assistance and evaluation requirements of this section;

(3) Meet the State’s requirements for the implementation of the Manure Transportation Project under § 8-704.2 of this title; and

(4) Provide State assistance under the Maryland Agricultural Water Quality Cost Share Program in the Department.

(d)(1) State cost sharing may be made available to help offset the costs of having a nutrient management plan prepared by a certified nutrient management consultant who is not employed by the federal, State, or a local government.

(2) The Secretary of Agriculture shall adopt regulations authorizing the disbursement of State cost sharing funds under this subsection.

(3) The Department may procure the services of a private certified nutrient management consultant to develop nutrient management plans for persons operating a farm.

(e)(1) By December 31, 2001, a person who, in operating a farm, uses chemical fertilizer, shall have a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2)(i) By December 31, 2001, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen.

(ii) By July 1, 2004, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen and phosphorus.

(f)(1) By December 31, 2002, a person who, in operating a farm, uses chemical fertilizer, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2)(i) By December 31, 2002, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen that meets the requirements of this subtitle.

(ii) By July 1, 2005, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(g) A person may meet the requirements of subsection (e) of this section by requesting, at least 60 days before the applicable date set forth in subsection (e) of this section, the development of a nutrient management plan by a certified nutrient management consultant.

(h)(1) If a person violates the provisions of subsection (e) of this section, the Department shall notify the person that the person is in violation of the requirement to have a nutrient management plan.

(2) After a reasonable period of time, if the person fails to have a nutrient management plan, the person is subject to an administrative penalty not to exceed \$250.

(i)(1) A person who violates any provision of subsection (f) of this section or of any rule, regulation, or order adopted or issued under this section is subject to:

(i) For a first violation, a warning; and

(ii) For a second or subsequent violation, after an opportunity for a hearing which may be waived in writing by the person accused of a violation, an administrative penalty that may be imposed by the Department of Agriculture.

(2) The penalty imposed on a person under paragraph (1)(ii) of this subsection shall be:

(i) Up to \$100 for each violation, but not exceeding \$2,000 per farmer or operator per year; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health;



3. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

4. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(3)(i) Except as provided in subparagraph (ii) of this paragraph, each day a violation occurs is a separate violation under this subsection.

(ii) Daily penalties do not continue to accrue as long as the farmer takes reasonable steps to correct the violation.

(4) Any penalty imposed under this subsection is payable to the Maryland Agricultural Water Quality Cost Share Program within the Department.

(j) If a person violates any provision of this section, the Department may:

(1) Require repayment of cost share funds under Subtitle 7 of this title for the project that is in violation; or

(2) Deny or restrict future cost share payments under Subtitle 7 of this title.

(k)(1) The Department shall determine compliance with the provisions of this section.

(2) The Department may review the nutrient management plan and records relating to the plan at a location agreed to by the Department and the person operating the farm.

(3) In conducting a site visit and reviewing the nutrient management plan and related records, the Department's evaluation shall be limited solely to determining whether the person operating the farm is in compliance with the provisions of this section or the regulations implementing this section.

(4) In conducting a site visit, the Department shall:

- (i) Provide the person operating the farm at least 48 hours advance notice;
- (ii) Enter the property at a reasonable time that allows the person operating the farm to be present; and
- (iii) Conduct the evaluation in a manner that minimizes any inconvenience to the person operating the farm.

(5) If a person operating a farm fails to cooperate with the Department's request to conduct a site visit and review of a nutrient management plan and records relating to the plan, that person is subject to subsections (i) and (j) of this section.

***E. Md. Code Ann., Health–Gen. § 4-101. Confidential record defined***

In this subtitle, “confidential record” means any record, report, statement, note, or other information that:

- (1) Is assembled or obtained for research or study by:
  - (i) The Drug Abuse Administration;
  - (ii) The AIDS Administration; or
  - (iii) The Secretary; and
- (2) Names or otherwise identifies any person.

***F. Md. Code Ann., Health–Gen. § 4-102. Confidential records; custody and use***

In general

- (a)(1) Each confidential record shall remain in the custody and control of:

(i) The Drug Abuse Administration, if that Administration assembled or obtained the confidential record;

(ii) The AIDS Administration, if that Administration assembled or obtained the confidential record; or

(iii) The Secretary or an agent or employee of the Secretary, if the Secretary assembled or obtained the confidential record.

(2) The confidential record may be used only for the research and study for which it was assembled or obtained.

(3) A person may not disclose any confidential record to any person who is not engaged in the research or study project.

#### Exception

(b) This section does not apply to or restrict the use or publication of any statistics, information, or other material that summarizes or refers to confidential records in the aggregate, without disclosing the identity of any person who is the subject of the confidential record.

### ***G. Md. Code Ann., State Gov't §10-611. Definitions***

#### **In general**

(a) In this Part III of this subtitle the following words have the meanings indicated.

#### **Applicant**

(b) “Applicant” means a person or governmental unit that asks to inspect a public record.

#### **Custodian**

(c) “Custodian” means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

#### **Metadata**

(d)(1) “Metadata” means information, generally not visible when an electronic document is printed, describing the history, tracking, or management of the electronic document, including information about data in the electronic document that describes how, when, and by whom the data is collected, created, accessed, or modified and how it is formatted.

(2) “Metadata” does not include:

- (i) a spreadsheet formula;
- (ii) a database field;
- (iii) an externally or internally linked file; or
- (iv) a reference to an external file or hyperlink.

### **Official custodian**

(e) “Official custodian” means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

### **Person in interest**

(f) “Person in interest” means:

- (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;
- (2) if the person has a legal disability, the parent or legal representative of the person; or
- (3) as to requests for correction of certificates of death under § 5-310(d)(2) of the Health--General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.

### **Personal information**

(g)(1) Except as otherwise provided in this Part III, “personal information” means information that identifies an individual including an individual's address, driver's license number or any other identification number, medical or disability information, name, photograph or computer generated image, Social Security number, or telephone number.

(2) "Personal information" does not include an individual's driver's status, driving offenses, 5-digit zip code, or information on vehicular accidents.

### **Public record**

(h)(1) "Public record" means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;
9. a recording; or
10. a tape.

(2) "Public record" includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision.

(3) "Public record" does not include a digital photographic image or signature of an individual, or the actual stored data thereof, recorded by the Motor Vehicle Administration.

### **Telephone solicitation**

(i)(1) “Telephone solicitation” means the initiation of a telephone call to an individual or to the residence or business of an individual for the purpose of encouraging the purchase or rental of or investment in property, goods, or services.

(2) “Telephone solicitation” does not include a telephone call or message:

(i) to an individual who has given express permission to the person making the telephone call;

(ii) to an individual with whom the person has an established business relationship;  
or

(iii) by a tax-exempt, nonprofit organization.

#### ***H. Md. Code Ann., State Gov’t § 10-612. General right to information***

##### **Public access to information**

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

##### **General construction**

(b) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

##### **General Assembly**

(c) This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered.

#### ***I. Md. Code Ann., State Gov’t § 10-613. Inspection of public records***

##### **In general**

(a)(1) Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.

(2) Inspection or copying of a public record may be denied only to the extent provided under this Part III of this subtitle.

### **Rules or regulations**

(b) To protect public records and to prevent unnecessary interference with official business, each official custodian shall adopt reasonable rules or regulations that, subject to this Part III of this subtitle, govern timely production and inspection of a public record.

### **Immediate access to records**

(c) Each official custodian shall consider whether to:

(1) designate specific types of public records of the governmental unit that are to be made available to any applicant immediately upon request; and

(2) maintain a current list of the types of public records that have been designated as available to any applicant immediately upon request.

### ***J. Md. Code Ann., State Gov't § 10-615, Required denials—In general***

A custodian shall deny inspection of a public record or any part of a public record if:

(1) by law, the public record is privileged or confidential; or

(2) the inspection would be contrary to:

(i) a State statute;

(ii) a federal statute or a regulation that is issued under the statute and has the force of law;

(iii) the rules adopted by the Court of Appeals; or

(iv) an order of a court of record.

### ***K. Md. Code Ann., State Gov't § 10-616, Required denials—Specific records***

#### **In general**

(a) Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

**Adoption records**

(b) A custodian shall deny inspection of public records that relate to the adoption of an individual.

**Welfare records**

(c) A custodian shall deny inspection of public records that relate to welfare for an individual.

**Letters of reference**

(d) A custodian shall deny inspection of a letter of reference.

**Public library records**

(e)(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall prohibit inspection, use, or disclosure of a circulation record of a public library or other item, collection, or grouping of information about an individual that:

(i) is maintained by a library;

(ii) contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and

(iii) identifies the use a patron makes of that library's materials, services, or facilities.

(2) A custodian shall permit inspection, use, or disclosure of a circulation record of a public library only in connection with the library's ordinary business and only for the purposes for which the record was created.

**Gifts to libraries, archives, or museums**

(f) A custodian shall deny inspection of library, archival, or museum material given by a person to the extent that the person who made the gift limits disclosure as a condition of the gift.

**Retirement records**

(g)(1) Subject to paragraphs (2) through (7) of this subsection, a custodian shall deny inspection of a retirement record for an individual.

(2) A custodian shall permit inspection:



- (i) by the person in interest;
  - (ii) by the appointing authority of the individual;
  - (iii) after the death of the individual, by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual; and
  - (iv) by any law enforcement agency in order to obtain the home address of a retired employee of the agency when contact with a retired employee is documented to be necessary for official agency business.
- (3) A custodian shall permit inspection by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.
- (4) On request, a custodian shall state whether the individual receives a retirement or pension allowance.
- (5) A custodian shall permit release of information as provided in § 21-504 or § 21-505 of the State Personnel and Pensions Article.
- (6) On written request, a custodian shall:
- (i) disclose the amount of that part of a retirement allowance that is derived from employer contributions and that is granted to:
    - 1. a retired elected or appointed official of the State;
    - 2. a retired elected official of a political subdivision; or
    - 3. a retired appointed official of a political subdivision who is a member of a separate system for elected or appointed officials; or
  - (ii) disclose the benefit formula and the variables for calculating the retirement allowance of:
    - 1. a current elected or appointed official of the State;
    - 2. a current elected official of a political subdivision; or

3. a current appointed official of a political subdivision who is a member of a separate system for elected or appointed officials.

(7)(i) This paragraph applies to Anne Arundel County.

(ii) On written request, a custodian of retirement records shall disclose:

1. the total amount of that part of a pension or retirement allowance that is derived from employer contributions and that is granted to a retired elected or appointed official of the county;

2. the total amount of that part of a pension or retirement allowance that is derived from employee contributions and that is granted to a retired elected or appointed official of the county, if the retired elected or appointed official consents to the disclosure;

3. the benefit formula and the variables for calculating the retirement allowance of a current elected or appointed official of the county; or

4. the amount of the employee contributions plus interest attributable to a current elected or appointed official of the county, if the current elected or appointed official consents to the disclosure.

(iii) A custodian of retirement records shall maintain a list of those elected or appointed officials of the county who have consented to the disclosure of information under subparagraph (ii)2 or 4 of this paragraph.

#### **Traffic and criminal records; persons soliciting or marketing legal services**

(h)(1) This subsection applies only to public records that relate to:

(i) police reports of traffic accidents;

(ii) criminal charging documents prior to service on the defendant named in the document; and

(iii) traffic citations filed in the Maryland Automated Traffic System.

(2) A custodian shall deny inspection of a record described in paragraph (1) of this subsection to any of the following persons who request inspection of records for the purpose of soliciting or marketing legal services:

(i) an attorney who is not an attorney of record of a person named in the record; or

- (ii) a person who is employed by, retained by, associated with, or acting on behalf of an attorney described in this paragraph.

### **Personnel records**

(i)(1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.

(2) A custodian shall permit inspection by:

- (i) the person in interest; or
- (ii) an elected or appointed official who supervises the work of the individual.

### **Hospital records**

(j) A custodian shall deny inspection of a hospital record that:

(1) relates to:

- (i) medical administration;
- (ii) staff;
- (iii) medical care; or
- (iv) other medical information; and

(2) contains general or specific information about 1 or more individuals.

### **Student records**

(k)(1) Subject to paragraphs (2) and (3) of this subsection, a custodian shall deny inspection of a school district record about the home address, home phone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.

(2) A custodian shall permit inspection by:

- (i) the person in interest; or
- (ii) an elected or appointed official who supervises the student.

(3)(i) A custodian may permit inspection of the home address or home phone number of a student of a public school by:

1. an organization of parents, teachers, students, or former students, or any combination of those groups, of the school;
2. an organization or force of the military;
3. a person engaged by a school or board of education to confirm a home address or home phone number;
4. a representative of a community college in the State; or
5. the Maryland Higher Education Commission.

(ii) The Commission or a person, organization, or community college that obtains information under this paragraph may not:

1. use this information for a commercial purpose; or
2. disclose this information to another person, organization, or community college.

(iii) When a custodian permits inspection under this paragraph, the custodian shall notify the Commission, person, organization, or community college of the prohibitions under subparagraph (ii) of this paragraph regarding use and disclosure of this information.

### **Risk-based capital records**

(l) Subject to the provisions of § 4-310 of the Insurance Article, a custodian shall deny inspection of all RBC reports and RBC plans and any other records that relate to those reports or plans.

### **Electronic toll collection system records**

(m)(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall deny inspection of all photographs, videotapes or electronically recorded images of vehicles, vehicle movement records, personal financial information, credit reports, or other personal or financial data created, recorded, obtained by or submitted to the Maryland Transportation Authority or its agents or employees in connection with any electronic toll collection system or associated transaction system.

(2) A custodian shall permit inspection of the records enumerated in paragraph (1) of this subsection by:

- (i) an individual named in the record;
- (ii) the attorney of record of an individual named in the record;
- (iii) employees or agents of the Maryland Transportation Authority in any investigation or proceeding relating to a violation of speed limitations or to the imposition of or indemnification from liability for failure to pay a toll in connection with any electronic toll collection system;
- (iv) employees or agents of a third party that has entered into an agreement with the Maryland Transportation Authority to use an electronic toll collection system for nontoll applications in the collection of revenues due to the third party; or
- (v) employees or agents of an entity in another state operating or having jurisdiction over a toll facility.

#### **Higher education investment contract records**

(n)(1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of any record disclosing:

- (i) the name of an account holder or qualified beneficiary of a prepaid contract under Title 18, Subtitle 19 of the Education Article; and
- (ii) the name of an account holder or qualified designated beneficiary of an investment account under Title 18, Subtitle 19A of the Education Article.

(2) A custodian:

- (i) shall permit inspection by a person in interest; and
- (ii) may release information to an eligible institution of higher education designated:
  1. by an account holder of a prepaid contract or qualified beneficiary under Title 18, Subtitle 19A of the Education Article; or
  2. by an account holder or qualified designated beneficiary under Title 18, Subtitle 19A of the Education Article.

#### **Traffic control signal monitoring system and speed monitoring system records**

(o)(1) In this subsection, “recorded images” has the meaning stated in § 21-202.1, § 21-809, § 21-810, or § 24-111.3 of the Transportation Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian of recorded images produced by a traffic control signal monitoring system operated under § 21-202.1 of the Transportation Article, a speed monitoring system operated under § 21-809 of the Transportation Article, a work zone speed control system operated under § 21-810 of the Transportation Article, or a vehicle height monitoring system operated under § 24-111.3 of the Transportation Article shall deny inspection of the recorded images.

(3) A custodian shall allow inspection of recorded images:

(i) as required in § 21-202.1, § 21-809, § 21-810, or § 24-111.3 of the Transportation Article;

(ii) by any person issued a citation under § 21-202.1, § 21-809, § 21-810, or § 24-111.3 of the Transportation Article, or an attorney of record for the person; or

(iii) by an employee or agent of an agency in an investigation or proceeding relating to the imposition of or indemnification from civil liability pursuant to § 21-202.1, § 21-809, § 21-810, or § 24-111.3 of the Transportation Article.

#### **Motor Vehicle Administration records**

(p)(1) Except as provided in paragraphs (2) through (5) of this subsection, a custodian may not knowingly disclose a public record of the Motor Vehicle Administration containing personal information.

(2) A custodian shall disclose personal information when required by federal law.

(3)(i) This paragraph applies only to the disclosure of personal information for any use in response to a request for an individual motor vehicle record.

(ii) The custodian may not disclose personal information without written consent from the person in interest.

(iii) 1. At any time the person in interest may withdraw consent to disclose personal information by notifying the custodian.

2. The withdrawal by the person in interest of consent to disclose personal information shall take effect as soon as practicable after it is received by the custodian.

(4)(i) This paragraph applies only to the disclosure of personal information for inclusion in lists of information to be used for surveys, marketing, and solicitations.

(ii) The custodian may not disclose personal information for surveys, marketing, and solicitations without written consent from the person in interest.

(iii) 1. At any time the person in interest may withdraw consent to disclose personal information by notifying the custodian.

2. The withdrawal by the person in interest of consent to disclose personal information shall take effect as soon as practicable after it is received by the custodian.

(iv) The custodian may not disclose personal information under this paragraph for use in telephone solicitations.

(v) Personal information disclosed under this paragraph may be used only for surveys, marketing, or solicitations and only for a purpose approved by the Motor Vehicle Administration.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this subsection, a custodian shall disclose personal information:

(i) for use by a federal, state, or local government, including a law enforcement agency, or a court in carrying out its functions;

(ii) for use in connection with matters of:

1. motor vehicle or driver safety;

2. motor vehicle theft;

3. motor vehicle emissions;

4. motor vehicle product alterations, recalls, or advisories;

5. performance monitoring of motor vehicle parts and dealers; and

6. removal of nonowner records from the original records of motor vehicle manufacturers;

(iii) for use by a private detective agency licensed by the Secretary of State Police under Title 13 of the Business Occupations and Professions Article or a security guard service licensed by the Secretary of State Police under Title 19 of the Business Occupations and Professions Article for a purpose permitted under this paragraph;

(iv) for use in connection with a civil, administrative, arbitral, or criminal proceeding in a federal, state, or local court or regulatory agency for service of process, investigation in anticipation of litigation, and execution or enforcement of judgments or orders;

(v) for purposes of research or statistical reporting as approved by the Motor Vehicle Administration provided that the personal information is not published, redisclosed, or used to contact the individual;

(vi) for use by an insurer, insurance support organization, or self-insured entity, or its employees, agents, or contractors, in connection with rating, underwriting, claims investigating, and antifraud activities;

(vii) for use in the normal course of business activity by a legitimate business entity, its agents, employees, or contractors, but only:

1. to verify the accuracy of personal information submitted by the individual to that entity; and

2. if the information submitted is not accurate, to obtain correct information only for the purpose of:

- A. preventing fraud by the individual;

- B. pursuing legal remedies against the individual; or

- C. recovering on a debt or security interest against the individual;

(viii) for use by an employer or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. § 31101 et seq.);

(ix) for use in connection with the operation of a private toll transportation facility;

(x) for use in providing notice to the owner of a towed or impounded motor vehicle;

(xi) for use by an applicant who provides written consent from the individual to whom the information pertains if the consent is obtained within the 6-month period before the date of the request for personal information;

(xii) for use in any matter relating to:

1. the operation of a Class B (for hire), Class C (funeral and ambulance), or Class Q (limousine) vehicle; and



2. public safety or the treatment by the operator of a member of the public;
- (xiii) for a use specifically authorized by the law of this State, if the use is related to the operation of a motor vehicle or public safety;
- (xiv) for use by a hospital to obtain, for hospital security purposes, information relating to ownership of vehicles parked on hospital property;
- (xv) for use by a procurement organization requesting information under § 4-516 of the Estates and Trusts Article for the purposes of organ, tissue, and eye donation;
- (xvi) for use by an electric company, as defined in § 1-101 of the Public Utilities Article, but only:
  1. information describing a plug-in electric drive vehicle, as defined in § 11-145.1 of the Transportation Article, and identifying the address of the registered owner of the plug-in vehicle;
  2. for use in planning for the availability and reliability of the electric power supply; and
  3. if the information is not:
    - A. published or redisclosed, including redisclosed to an affiliate as defined in § 7-501 of the Public Utilities Article; or
    - B. used for marketing or solicitation purposes; and
- (xvii) for use by an attorney, a title insurance producer, or any other individual authorized to conduct a title search of a manufactured home under Title 8B of the Real Property Article.
- (6)(i) A person receiving personal information under paragraph (4) or (5) of this subsection may not use or redisclose the personal information for a purpose other than the purpose for which the custodian disclosed the personal information.
- (ii) A person receiving personal information under paragraph (4) or (5) of this subsection who rediscloses the personal information shall:
  1. keep a record for 5 years of the person to whom the information is redisclosed and the purpose for which the information is to be used; and
  2. make the record available to the custodian on request.

(7)(i) The custodian shall adopt regulations to implement and enforce the provisions of this subsection.

(ii) 1. The custodian shall adopt regulations and procedures for securing a person in interest's waiver of privacy rights under this subsection when an applicant requests personal information about the person in interest that the custodian is not authorized to disclose under paragraphs (2) through (5) of this subsection.

2. The regulations and procedures adopted under this subparagraph shall:

A. state the circumstances under which the custodian may request a waiver; and

B. conform with the waiver requirements in the federal Driver's Privacy Protection Act of 1994 and other federal law.

(8) The custodian may develop and implement methods for monitoring compliance with this section and ensuring that personal information is used only for purposes for which it is disclosed.

#### **Arrest warrants; charging documents**

(q)(1) Except as provided in paragraph (4) of this subsection and subject to the provisions of paragraph (5) of this subsection, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2) and the charging document upon which the arrest warrant was issued may not be open to inspection until either:

(i) the arrest warrant has been served and a return of service has been filed in compliance with Maryland Rule 4-212(g); or

(ii) 90 days have elapsed since the arrest warrant was issued.

(2) Except as provided in paragraph (4) of this subsection and subject to the provisions of paragraph (5) of this subsection, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued may not be open to inspection until all arrest warrants for any co-conspirators have been served and all returns of service have been filed in compliance with Maryland Rule 4-212(g).

(3) Subject to the provisions of paragraphs (1) and (2) of this subsection, unless sealed pursuant to Maryland Rule 4-201(d), the files and records shall be open to inspection.

(4)(i) Subject to subparagraph (ii) of this paragraph, the name, address, birth date, driver's license number, sex, height, and weight of an individual contained in an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2) or issued pursuant to a grand jury indictment or conspiracy investigation may be released to the Motor Vehicle Administration for use by the Administration for purposes of § 13-406.1 or § 16-204 of the Transportation Article.

(ii) Except as provided in subparagraph (i) of this paragraph, information contained in a charging document that identifies an individual may not be released to the Motor Vehicle Administration.

(5) The provisions of paragraphs (1) and (2) of this subsection may not be construed to prohibit:

(i) the release of statistical information concerning unserved arrest warrants;

(ii) the release of information by a State's Attorney or peace officer concerning an unserved arrest warrant and the charging document upon which the arrest warrant was issued;

(iii) inspection of files and records, of a court pertaining to an unserved arrest warrant and the charging document upon which the arrest warrant was issued, by:

1. a judicial officer;

2. any authorized court personnel;

3. a State's Attorney;

4. a peace officer;

5. a correctional officer who is authorized by law to serve an arrest warrant;

6. a bail bondsman, surety insurer, or surety who executes bail bonds who executed a bail bond for the individual who is subject to arrest under the arrest warrant;

7. an attorney authorized by the individual who is subject to arrest under the arrest warrant;

8. the Department of Juvenile Services; or

9. a federal, State, or local criminal justice agency described under Title 10, Subtitle 2 of the Criminal Procedure Article; or

(iv) the release of information by the Department of Public Safety and Correctional Services or the Department of Juvenile Services for the purpose of notification of a victim under § 11-507 of the Criminal Procedure Article.

#### **Maryland Transit Administration; electronic fare records**

(r)(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of all records of persons created, generated, obtained by, or submitted to the Maryland Transit Administration, its agents, or employees in connection with the use or purchase of electronic fare media provided by the Maryland Transit Administration, its agents, employees, or contractors.

(2) A custodian shall permit inspection of the records enumerated in paragraph (1) of this subsection by:

- (i) an individual named in the record; or
- (ii) the attorney of record of an individual named in the record.

#### **Department of Natural Resources records**

(s)(1) Subject to § 8-704.1 of the Natural Resources Article and paragraph (2) of this subsection, a custodian may not knowingly disclose a public record of the Department of Natural Resources containing personal information about the owner of a registered vessel.

(2) Notwithstanding paragraph (1) of this subsection, a custodian shall disclose personal information about the owner of a registered vessel for use in the normal course of business activity by a financial institution, as defined in § 1-101(i) of the Financial Institutions Article, its agents, employees, or contractors, but only:

- (i) to verify the accuracy of personal information submitted by the individual to that financial institution; and
- (ii) if the information submitted is not accurate, to obtain correct information only for the purpose of:
  - 1. preventing fraud by the individual;
  - 2. pursuing legal remedies against the individual; or
  - 3. recovering on a debt or security interest against the individual.

#### **Renewable energy credit records**

(t) A custodian shall deny inspection of an application for renewable energy credit certification or a claim for renewable energy credits under Title 10, Subtitle 15 of the Agriculture Article.

### **Surveillance images**

(u)(1) In this subsection, “surveillance image” has the meaning stated in § 10-112 of the Criminal Law Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian of a surveillance image shall deny inspection of the surveillance image.

(3) A custodian shall allow inspection of a surveillance image:

(i) as required in § 10-112 of the Criminal Law Article;

(ii) by any person issued a citation under § 10-112 of the Criminal Law Article, or an attorney of record for the person; or

(iii) by an employee or agent of the Baltimore City Department of Public Works in an investigation or proceeding relating to the imposition of or indemnification from civil liability under § 10-112 of the Criminal Law Article.

### **Inspection of records**

(v)(1) Except as provided in paragraphs (2) and (3) of this subsection, a custodian shall deny inspection of all records of a person authorized to:

(i) sell, purchase, rent, or transfer a regulated firearm under Title 5, Subtitle 1 of the Public Safety Article; or

(ii) carry, wear, or transport a handgun under Title 5, Subtitle 3 of the Public Safety Article.

(2) A custodian shall allow inspection of firearm or handgun records by:

(i) the individual named in the record; or

(ii) the attorney of record of the individual named in the record.

(3) The provisions of this subsection may not be construed to prohibit the Department of State Police or the Department of Public Safety and Correctional Services from accessing firearm or handgun records in the performance of that department's official duty.

***L. Md. Code Ann., State Gov't § 10-617, Required denials—Specific information***

**In general**

(a) Unless otherwise provided by law, a custodian shall deny inspection of a part of a public record, as provided in this section.

**Medical or psychological information**

(b)(1) In this subsection, “disability” has the meaning stated in § 20-701 of this article.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains:

(i) medical or psychological information about an individual, other than an autopsy report of a medical examiner;

(ii) personal information about an individual with a disability or an individual perceived to have a disability; or

(iii) any report on human immunodeficiency virus or acquired immunodeficiency syndrome submitted in accordance with Title 18 of the Health--General Article.

(3) A custodian shall permit the person in interest to inspect the public record to the extent permitted under § 4-304(a) of the Health--General Article.

(4) Except for paragraph (2)(iii) of this subsection, this subsection does not apply to:

(i) a nursing home as defined in § 19-1401 of the Health--General Article; or

(ii) an assisted living program as defined in § 19-1801 of the Health--General Article.

**Sociological information**

(c) If the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection, a custodian shall deny inspection of the part of a public record that contains sociological information, in accordance with the rules or regulations.

**Commercial information**

(d) A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental unit:

- (1) a trade secret;
- (2) confidential commercial information;
- (3) confidential financial information; or
- (4) confidential geological or geophysical information.

### **State employees**

(e) Subject to § 21-504 of the State Personnel and Pensions Article, a custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the State or of a political subdivision unless:

- (1) the employee gives permission for the inspection; or
- (2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

### **Financial information**

(f)(1) This subsection does not apply to the salary of a public employee.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

(3) A custodian shall permit inspection by the person in interest.

### **Information systems**

(g) A custodian shall deny inspection of the part of a public record that contains information about the security of an information system.

### **Licensing records**

(h)(1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or profession.

(2) A custodian shall permit inspection of the part of a public record that gives:

- (i) the name of the licensee;

(ii) the business address of the licensee or, if the business address is not available, the home address of the licensee after the custodian redacts all information, if any, that identifies the location as the home address of an individual with a disability as defined in subsection (b) of this section;

(iii) the business telephone number of the licensee;

(iv) the educational and occupational background of the licensee;

(v) the professional qualifications of the licensee;

(vi) any orders and findings that result from formal disciplinary actions; and

(vii) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

(3) A custodian may permit inspection of other information about a licensee if:

(i) the custodian finds a compelling public purpose; and

(ii) the rules or regulations of the official custodian permit the inspection.

(4) Except as otherwise provided by this subsection or other law, a custodian shall permit inspection by the person in interest.

(5) A custodian who sells lists of licensees shall omit from the lists the name of any licensee, on written request of the licensee.

### **Transportation contractors**

(i) A custodian shall deny inspection of the part of a public record that contains information, generated by the bid analysis management system, concerning an investigation based on a transportation contractor's suspected collusive or anticompetitive activity submitted to the Department by:

(1) the United States Department of Transportation; or

(2) another state.

### **Notaries public**

(j)(1) Subject to paragraphs (2) through (5) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the application and commission of a person as a notary public.



(2) A custodian shall permit inspection of the part of a public record that gives:

- (i) the name of the notary public;
- (ii) the home address of the notary public;
- (iii) the home and business telephone numbers of the notary public;
- (iv) the issue and expiration dates of the notary public's commission;
- (v) the date the person took the oath of office as a notary public; or
- (vi) the signature of the notary public.

(3) A custodian may permit inspection of other information about a notary public if the custodian finds a compelling public purpose.

(4) A custodian may deny inspection of a record by a notary public or any other person in interest only to the extent that the inspection could:

- (i) interfere with a valid and proper law enforcement proceeding;
- (ii) deprive another person of a right to a fair trial or an impartial adjudication;
- (iii) constitute an unwarranted invasion of personal privacy;
- (iv) disclose the identity of a confidential source;
- (v) disclose an investigative technique or procedure;
- (vi) prejudice an investigation; or
- (vii) endanger the life or physical safety of an individual.

(5) A custodian who sells lists of notaries public shall omit from the lists the name of any notary public, on written request of the notary public.

### **Social Security numbers**

(k)(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of the part of an application for a marriage license under § 2-402 of the Family Law Article or a recreational license under Title 4 of the Natural Resources Article that contains a Social Security number.

(2) A custodian shall permit inspection of the part of an application described in paragraph (1) of this subsection that contains a Social Security number to:

- (i) a person in interest; or
- (ii) on request, the State Child Support Enforcement Administration.

### **Alarm and security systems**

(l)(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of the part of a public record that identifies or contains personal information about a person, including a commercial entity, that maintains an alarm or security system.

(2) A custodian shall permit inspection by:

- (i) the person in interest;
- (ii) an alarm or security system company if the company can document that it currently provides alarm or security services to the person in interest;
- (iii) law enforcement personnel; and
- (iv) emergency services personnel, including:
  - 1. a career firefighter;
  - 2. an emergency medical services provider, as defined in § 13-516 of the Education Article;
  - 3. a rescue squad employee; and
  - 4. a volunteer firefighter, rescue squad member, or advanced life support unit member.

### **Senior citizen activities center**

(m)(1) “Senior citizen activities center” has the meaning stated in § 10-513 of the Human Services Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains the name, address, telephone number, or electronic mail address of any individual enrolled in or any member of a senior citizen activities center.

(3) A custodian shall permit inspection by:

- (i) a person in interest;
- (ii) law enforcement personnel; or
- (iii) emergency services personnel, including:
  - 1. a career firefighter;
  - 2. an emergency medical services provider, as defined in § 13-516 of the Education Article;
  - 3. a rescue squad employee; and
  - 4. a volunteer firefighter, rescue squad member, or advanced life support unit member.

***M. Md. Code Ann., State Gov't § 10-618. Permissible denials***

**In general**

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

**Interagency and intra-agency documents**

(b) A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

**Examinations**

(c)(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.

(2) After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise to reproduce the examination.

**Research projects**

(d)(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.

(2) A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.

### **Real estate appraisals**

(e)(1) Subject to paragraph (2) of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.

(2) A custodian may not deny inspection to the owner of the property.

### **Investigations**

(f)(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of:

(i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;

(ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or

(iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a State or local correctional facility, or a sheriff.

(2) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual.

### **Natural resources**

(g)(1) A custodian may deny inspection of a public record that contains information concerning the site-specific location of an endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, a cave, or a historic property as defined in § 5A-301 of the State Finance and Procurement Article.

(2) A custodian may not deny inspection of a public record described in paragraph (1) of this subsection if requested by:

- (i) the owner of the land upon which the resource is located; or
- (ii) any entity that could take the land through the right of eminent domain.

### **Inventions**

(h)(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of that part of a public record that contains information disclosing or relating to an invention owned in whole or in part by a State public institution of higher education for 4 years to permit the institution to evaluate whether to patent or market the invention and pursue economic development and licensing opportunities related to the invention.

(2) A custodian may not deny inspection of a part of a public record described in paragraph (1) of this subsection if:

- (i) the information disclosing or relating to an invention has been published or disseminated by the inventors in the course of their academic activities or disclosed in a published patent;
- (ii) the invention referred to in that part of the record has been licensed by the institution for at least 4 years; or
- (iii) 4 years have elapsed from the date of the written disclosure of the invention to the institution.

### **Commercial information**

(i) A custodian may deny inspection of that part of a public record that contains information disclosing or relating to a trade secret, confidential commercial information, or confidential financial information owned in whole or in part by:

- (1) the Maryland Technology Development Corporation; or

(2) a public institution of higher education, if the information is part of the institution's activities under § 15-107 of the Education Article.

### **Emergency plans**

(j)(1) Subject to paragraphs (2), (3), and (4) of this subsection, a custodian may deny inspection of:

(i) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;

(ii) 1. building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of ports and airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, waste and water systems, and any other building, structure, or facility, the disclosure of which would reveal the building's, structure's or facility's internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or

2. records of any other building, structure, or facility, the disclosure of which would reveal the building's, structure's, or facility's life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or

(iii) records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories.

(2) The custodian may deny inspection of a part of a public record under paragraph (1) of this subsection only to the extent that the inspection would:

(i) jeopardize the security of any building, structure, or facility;

(ii) facilitate the planning of a terrorist attack; or

(iii) endanger the life or physical safety of an individual.

(3)(i) Subject to subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record under paragraph (1) or (2) of this subsection that relates

to a building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(4)(i) Subject to paragraphs (1) and (2) of this subsection and subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record that relates to an inspection of or issuance of a citation concerning a building, structure, or facility by an agency of the State or any political subdivision.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

### **Maryland Port Administration**

(k)(1) A custodian may deny inspection of any part of a public record that contains:

(i) stevedoring or terminal services or facility use rates or proposed rates generated, received, or negotiated by the Maryland Port Administration or any private operating company created by the Maryland Port Administration;

(ii) a proposal generated, received, or negotiated by the Maryland Port Administration or any private operating company created by the Maryland Port Administration for use of stevedoring or terminal services or facilities to increase waterborne commerce through the ports of the State; or

(iii) except as provided in paragraph (2) of this subsection, research or analysis related to maritime businesses or vessels compiled for the Maryland Port Administration or any private operating company created by the Maryland Port Administration to evaluate its competitive position with respect to other ports.

(2)(i) A custodian may not deny inspection of any part of a public record under paragraph (1)(iii) of this subsection by the exclusive representative identified in Section 1 of the memorandum of understanding, or any identical section of a successor memorandum, between the State and the American Federation of State, County and Municipal Employees dated June 28, 2000 or the memorandum of understanding, or any identical section of a successor memorandum, between the State and the Maryland Professional Employees Council dated August 18, 2000 if the part of the public record:

1. is related to State employees; and

2. would otherwise be available to the exclusive representative under Article 4, Section 12 of the memorandum of understanding or any identical section of a successor memorandum of understanding.

(ii) Before the inspection of any part of a public record under subparagraph (i) of this paragraph, the exclusive representative shall enter into a nondisclosure agreement with the Maryland Port Administration to ensure the confidentiality of the information provided.

### **Maryland University College**

(l)(1) A custodian may deny inspection of any part of a public record that relates to the University of Maryland University College's competitive position with respect to other providers of education services and that contains:

(i) fees, tuition, charges, and any information supporting fees, tuition, and charges, proposed, generated, received, or negotiated for receipt by the University of Maryland University College, except fees, tuition, and charges published in catalogues and ordinarily charged to students;

(ii) a proposal generated, received, or negotiated by the University of Maryland University College, other than with its students, for the provision of education services; or

(iii) any research, analysis, or plans compiled by or for the University of Maryland University College relating to its operations or proposed operations.

(2) A custodian may not deny inspection of any part of a public record under paragraph (1) of this subsection if:

(i) the record relates to a procurement by the University of Maryland University College;

(ii) the University of Maryland University College is required to develop or maintain the record by law or at the direction of the Board of Regents of the University System of Maryland; or

(iii) 1. the record is requested by the exclusive representative of any bargaining unit of employees of the University of Maryland University College;

2. the record relates to a matter that is the subject of collective bargaining negotiations between the exclusive representative and the University of Maryland University College; and



3. the exclusive representative has entered into a nondisclosure agreement with the University of Maryland University College to ensure the confidentiality of the information provided.

### **Directory information; personal information**

(m)(1)(i) In this subsection the following words have the meanings indicated.

(ii) “Directory information” has the same meaning as provided in 20 U.S.C. § 1232g.

(iii) “Personal information” means:

1. an address;
2. a phone number;
3. an electronic mail address; or
4. directory information.

(2) A custodian of a record kept by a public institution of higher education that contains personal information relating to a student, former student, or applicant may:

- (i) require that a request to inspect a record containing personal information be made in writing and sent by first-class mail; and
- (ii) if the information is requested for commercial purposes, deny inspection of the part of the record containing the personal information.

## **II. Maryland Regulations**

### ***A. Md. Code Regs. 15.20.07.06 Record-Keeping and Reporting Requirements***

#### **A. Operator Reporting Requirements-Plan Development.**

(1) An operator shall submit to the Department a summary of the nutrient management plan for the agricultural operation in a form that the Department requires when it is first developed to meet requirements of this chapter, according to the deadlines provided by Regulation .04A and B of this chapter.

(2) A nutrient management plan submitted to the Department by an operator for the first time shall include:

(a) A statement agreeing to cooperate with the Department to establish a reasonable time to evaluate compliance with the plan, by reviewing records and visiting the farm site or sites, as provided in §B(2) of this regulation;

(b) Descriptive information of the agricultural operation provided on a Department form, including the owner or operator, location of the operation, type of agricultural operation, and name of the individual preparing the plan;

(c) A summary section of the plan indicating all nutrient recommendations during the plan period, as provided by COMAR 15.20.08.04F;

(d) Soil analysis information; and

(e) A clearly recognizable map or aerial photograph identifying location and boundaries of the agricultural operation, individual field boundaries or management units, and acreage.

(3) Following the first submission of required nutrient management plan information to the Department, all operators subject to this chapter shall file by March 1 of each year an end of the cropping season report that covers the previous calendar year. The report shall be submitted on a form that the Department requires, and shall include, but not be limited to:

(a) A summary of basic information identifying the operator and characterizing the farm operation to include any changes in information on the agricultural operation that was provided in the reporting form for the first submitted plan;

(b) Total acreage managed under a nutrient management plan by crop and total nutrients applied by crop; and

(c) A statement verifying that:

(i) The information provided is true and accurate; and

(ii) A valid nutrient management plan will be followed during the current cropping season and upcoming cropping year.

(4) The Department shall keep, and shall protect the confidentiality of, all nutrient management plan information submitted, so as to protect the identity of the person for whom the plan was developed.

## B. Operator Record-Keeping Requirements-Plan Implementation.

(1) The Department may periodically review records of an agricultural operator solely to determine if a nutrient management plan is implemented in accordance with the provisions of this chapter.

(2) When reviewing an operator's records, the Department shall:

(a) Arrange a meeting with the operator at a reasonable time and location, that allows the property owner or operator to be present, with a minimum of 48 hours prior notice; and

(b) Conduct the evaluation in a manner that minimizes any inconvenience to the operator.

(3) A person operating a farm who fails to cooperate with the Department's request to conduct a site visit or review a nutrient management plan and records relating to the plan is subject to the penalties provided in Regulation .07 of this chapter.

(4) Except as provided in this section, an operator subject to this chapter shall retain for 3 years the following records:

(a) Any nutrient management plan prepared for an agricultural operation, as required under this chapter;

(b) Soil analysis results for an agricultural operation;

(c) For agricultural crops produced or harvested annually, specific field or management unit yield information for the last 5 years which may include estimates based on volume or weight;

(d) For agricultural products that are not produced or harvested annually, or whose production is not managed based on an annual yield goal, such as nursery plants, information documenting nutrient use to meet specific production goals for three production cycles, or 3 years, whichever is less;

(e) For out-of-ground or container production, a description of production cycles and methods for all plants grown, including the following:

(i) The length of the production cycle and primary nutrients applied in each growing cycle,

(ii) A description of substrates used, and

- (iii) An analysis of organic materials used as a source of nutrients in the substrate;
  - (f) Receipts related to the purchase of nutrients;
  - (g) Documentation of the timing, rate, quantity, type or types, and analysis of nutrients used with reference to field location and number, or management unit, consistent with the production plan, site map, or aerial photograph provided in the nutrient management plan identifying that agricultural land;
  - (h) Manure analysis results when animal manure is used as a nutrient source, and information about the manure management system, if animals are part of the production unit or if animal manure is used as a nutrient source, but animals are not produced on the operation;
  - (i) Monitoring information on runoff testing, including test results, as required for out-of-ground agricultural operations by COMAR 15.20.08.07D; and
  - (j) Documentation justifying any changes made to the nutrient management plan, as provided under Regulation .05C of this chapter.
- (5) An operator shall keep the records required by §B(4)(a)-(h) of this regulation in a manner acceptable to the Department and shall make them available to the Department, upon request.